IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

RCRev..No. 409 of 2006

RCA.23/2004 of RENT CONTROL APPELLATE AUTHORITY, KALPETTA
RCP.7/2001 of RENT CONTROL COURT, MANANTHAVADY
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REVN.PETITIONERS/APPELLANTS/RESPONDENTS:

1. T.V.PATHOOTTY, W/O. MURIKOLY KHADER,
   RASEENA MANZIL, 3RD MILE, WEST PONNIYAM P.O.,
   THALASSERY.

2. T.V.SAMEER, S/O. MURIKOLY KHADER, DO. DO.
   PRESENTLY RESIDING AT SHAMEER COTTAGE,
   V.C.ROAD JUNCTION, P.O.MANANTHAVADY,
   WAYANAD DISTRICT.

3. T.V.RASEENA, D/O. MURIKOLY KHADER,
   SAMEER STORES, MAIN ROAD, MANANTHAVADY
   AMSOM & TALUK, WAYANAD DISTRICT.

4. T.V.SHAMEENA, D/O. MURIKOLI KHADER, RASEENA
   MANZIL, 3RD MILE, WEST PONNIYAM P.O.,THALASSERY.

5. T.V.SAFNA, D/O. MURIKOLY KHADER, DO. DO.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

RESPONDENTS/APPELLANTS/RESPONDENTS/PETITIONER:

1. SAFEER, S/O. MURIKOLY KHADER,
   RAZEENA MANZIL, 3RD MILE, WEST PONNIYAM P.O.,
   THALASSERY.

2. SHAHINA, D/O. MURIKOLY KHADER, DO. DO.

3. K.P.SHABEER, S/O. MARIYAM, HOTEL HACKSONS,
MANANTHAVADY POST, VILLAGE & TALUK,
MANANTHAVADY, WAYANAD DISTRICT.

4. THASNI, D/O. MURIKOLY KHADER,
RAZEENA MANZIL, 3RD MILE, WEST PONNIYAM,
THALASSERY, WEST PONNIYAM, THALASSERY.

5. SAJEER, S/O. MURIKOLY KHADER, DO. DO.

BY ADV. SMT.T.D.RAJALAKSHMI
SRI.E.R.VENKATESWARAN

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 409 of 2006

ORDER

Balachandran, J.

Counter petitioners 1, 3, 5, 8 and 9 in R.C.P. No.7/01 on the file of the Rent Control Court, Mananthavady are the petitioners. Counter petitioners 4, 6, 2 and 7 in the RCP are respectively respondents 1, 2, 4 and 5 and the petitioner in the RCP is the third respondent in this revision. The third respondent filed petition for eviction of the petitioners and respondents 1, 2,4 and 5 from the scheduled building on grounds falling under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). Eviction was ordered by the Rent Control Court only under Section 11(3) of the Act, against which, counter petitioners 1, 3 to 6, 8 and 9 in the RCP filed R.C.A.No.23/04 before the Rent Control Appellate

Authority, Wayanad at Kalpetta and that was dismissed, concurring with the order of eviction passed by the Rent Control Court under Section 11 (3) of the Act. It is challenging the above concurrent order of eviction passed under Section 11(3) of the Act that the petitioners have preferred this revision.

2. Eviction was claimed by the landlord for his own residence, shifting his residence from the Tharavad house at Kannur to Mananthavady so as to enable him to manage his businesses there. The bona fides in the need advanced stood established by his tendering evidence as PW1 and producing documents Exhibits A1 to A20. The third counter petitioner alone gave evidence resisting the claim advanced by the third respondent/landlord. Evaluating the entire evidence in the case, the Rent Control Court as also the appellate authority was convinced of the bona fides in the need advanced by the landlord and hence, the concurrent order of eviction under

Section 11(3) of the Act.

3. Though the learned counsel for the petitioners attempted to advance arguments assailing the said concurrent findings of the authorities below under Section 11(3) of the Act, we are not convinced that grounds exist to enable us to interfere in revision with the concurrent findings of the authorities below, arrived at on a proper and detailed appreciation of the entire evidence adduced in the case. Probably, on being convinced that we are not moved by the submissions made assailing the concurrent findings of the authorities below under Section 11(3) of the Act, the learned counsel for the petitioners submitted that the petitioners be granted at least six months time to surrender vacant possession of the scheduled building to the third respondent/ landlord. Granting of six months time is opposed by the learned counsel for the third respondent. However, we are of the view that reasonable time

has to be granted to the petitioners to surrender vacant possession of the scheduled building to the third respondent/landlord.

In the result, we dismiss this Rent Control Revision. All the same, we grant the petitioners time of four months to surrender vacant possession of the scheduled building to the third respondent/ landlord on the following conditions:

i. that the petitioners shall deposit entire arrears of rent till 31.5.2007 before the execution court positively on or before 29.6.2007.

ii. that they shall file affidavit before the execution court on or before 30.6.2007 unconditionally undertaking to surrender vacant possession of the scheduled building to the third respondent/landlord on or before 12.10.2007 and reporting the details of discharge of arrears of rent and

iii. that in case of failure on the part of the petitioners to deposit the entire arrears of

rent as also to file affidavit within the time specified above, they shall not be entitled to continue in occupation of the scheduled building till 12.10.2007 and shall be liable to be evicted immediately after 30.6.2007 in execution of the order of eviction passed against them.

(J.B.Koshy, Judge)

12th June, 2007

(K.P.Balachandran, Judge)

tkv